

1 JEAN MURRELL ADAMS, Bar No. CA 138458  
2 LAURETTE M. GARCIA, Bar No. CA 242107  
3 ADAMS ESQ, a Professional Corp.  
4 449 Fifteenth Street, Suite 101  
Oakland, California 94612  
Telephone: (510) 832-6000  
Facsimile: (510) 832-3099

5 Attorneys for Plaintiff,  
6 KEISHA HAWKINS

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 KEISHA HAWKINS,

12 Plaintiff,

13 v.

14 BERKELEY UNIFIED SCHOOL DISTRICT,  
15 and DOES 1-20

16 Defendants.  
17

Case No.: C07-CV-04206-EMC

18  
19 **JOINT CASE MANAGEMENT**  
20 **STATEMENT**

21 **TO THE HONORABLE EDWARD M. CHEN, UNITED STATES MAGISTRATE COURT**  
22 **JUDGE:**

23 Pursuant to Rule 26(f) and Local Rule 16-9, counsel for the Plaintiff and Defendant met by  
24 telephone on October 31, 2007 and November 1, 2007. Counsel have had no further meetings  
25 since that date. Plaintiff, Keisha Hawkins ("Plaintiff" or "Hawkins") and Counter-Defendants  
26 Adams Esq. and Jean Murrell Adams were represented at the meeting by Jean Murrell Adams and  
Laurette M. Garcia; Defendant and Counter-Claimant Berkeley Unified School District was  
represented at the meeting by Peter Sturges.

27 (A) Jurisdiction: Plaintiff and Defendant agree that jurisdiction for the initial Complaint  
28 in this matter lies under 20 U.S.C. §1400 *et seq.*, more commonly known as the Reauthorized

1 "Individuals With Disabilities Education Act" ("IDEA"). This Court has original jurisdiction over  
2 this action pursuant to 28 U.S.C. §1331 in that it arises under the IDEA. Moreover, Section  
3 1415(i)(2) of Title 20 of the United States Code expressly vests this Court with jurisdiction over  
4 this appeal.

5 (B) Facts:

6 **STATEMENT OF FACTS - PLAINTIFF.** The following is Plaintiff's brief statement of  
7 the facts and a statement of the principal factual issues in dispute:

8 1. Plaintiff Keisha Hawkins is the mother of a minor child ("D.S." or  
9 "Student"), a Student eligible for special education due to a Speech and Language Impairment  
10 ("SLI"). D.S. has also been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD")  
11 and continues to have difficulty remaining focused and on-task.

12 2. An IEP meeting was conducted at Craigmont Elementary School on 9/29/05  
13 during Student's fifth grade year. The IEP team placed D.S. in the SDC/Learning Center for at least  
14 45-90 minutes or 39% and in general education at most 70%. The 9/29/05 IEP did not provide for  
15 RSP services and nowhere does that placement appear in that IEP. It is undisputed that the  
16 SDC/Learning Center was language based and included daily speech and language services and  
17 most of Student's goals focused on language processing.

18 3. Plaintiff contends that she received a notice prior to the beginning of the  
19 2006/2007 school year, indicating that D.S. would be placed in Ms. Wihr's class for sixth grade.  
20 She enrolled Student at King on or about August 29, 2006, and at that time, he was placed in  
21 Ms. Wihr's special day class ("SDC").

22 4. Between August 29 and August 31, 2006, certain District personnel began to  
23 believe that Student's SDC placement was improper. District personnel moved Student into a  
24 regular education classroom (allegedly with limited RSP "push-in" support) without Hawkins' prior  
25 knowledge or consent.

26 5. Hawkins first became aware of the unilateral change of placement several  
27 weeks later on 9/13/06 when she went to the school for a separate incident. At that time, Vice  
28 Principal Sing gave Hawkins Student's new class schedule, which contained only regular education

1 classes and the handwritten statement, "Moved from SDC to Reg Ed."

2 6. On October 5, 2006, Hawkins requested all of Student's records from the  
3 District. Rather than produce all records as Hawkins had requested, the District queried Hawkins as  
4 to the purpose of her request and then provided limited documents that *the District* believed  
5 Hawkins needed.

6 7. On October 20, 2006, Plaintiff's legal counsel requested records from the  
7 District. Again, the District failed to produce all of Student's records.

8 8. In a November 2006 internal email to her superior Don Klose, school  
9 psychologist Amy Rosenbaum inquired as to the whereabouts of Student's "change in placement  
10 IEP." In fact, the District had failed to convene such an IEP and failed to allow Parent, Student's  
11 SDC teacher, any general education teacher, a speech pathologist or the school psychologist to  
12 participate in the decision to change his placement.

13 9. Plaintiff contends that between the beginning of the 2006/2007 school year  
14 and February 2007, Student lost educational benefits as evidenced by his disciplinary problems and  
15 his barely passing grades. His grades immediately improved in February 2007 upon being placed  
16 back in Ms. Wihr's SDC class and receiving speech and language interventions.

17 10. On or about November 1, 2006, Plaintiff requested a due process hearing  
18 before the Office of Administrative Hearings alleging that the Defendant denied the minor D.S. a  
19 FAPE as required by federal and state law. Hearings were held on April 2-5 & 10, 2007. On  
20 May 18, 2007, the Office of Administrative Hearings issued a decision. The hearing officer  
21 concluded that Student prevailed with respect to the following issues: (i) The District violated  
22 Student's right to a FAPE by failing to conduct Student's annual IEP by September 29, 2006, and  
23 for the six week delay until the District initially scheduled the Student's IEP team meeting on  
24 November 13, 2006; (ii) The District violated Student's right to a FAPE by failing to provide  
25 speech and language therapy for a period of approximately 11 weeks.

## 26 STATEMENT OF FACTS - DEFENDANT

27 The following is Defendant's brief statement of the facts derived from the administrative  
28 hearing record and decision in the underlying administrative proceeding.

1           1.       Plaintiff Keisha Hawkins ("Hawkins") is the parent of a minor child ("Student")  
2 who was born on December 26, 1993. Student is a resident of Berkeley and currently attends  
3 Martin Luther King, Jr. Middle School ("KMS") in the Berkeley Unified School District  
4 ("District"). During the 2003-2004 school year, District assessed Student and found him eligible  
5 for special education services due to speech and language difficulties. District began providing  
6 special education and related services to Student at this time.

7           2.       Student has unique needs in the areas of reading comprehension and math problem  
8 solving due to a significant language impairment or auditory processing disorder, as well as  
9 attention issues (lack of focus, disorganization and distractibility).

10          3.       An Individualized Education Plan ("IEP") meeting was conducted at District's  
11 Craigmont Elementary School on September 29, 2005 during Student's fifth grade year. The IEP  
12 called for Student to be educated in a general education ("GE") classroom for up to 70% of his  
13 school day, and to receive special day class ("SDC") support, in the Learning Center Support  
14 Model, for at least 45 minutes per day, and up to 90 minutes per school day. The IEP indicated  
15 that 39% of Student's school day would be spent in special education, and the remainder would be  
16 spent in general education. Student received both resource specialist support and speech and  
17 language therapy in the Learning Center while at Craigmont.

18          4.       In the fall of 2006, Student began attending KMS as a 6<sup>th</sup> grader. Student's IEP of  
19 September 29, 2005, was still in effect on his first day at KMS. Due to a computer error, Student  
20 was placed in a SDC classroom at KMS. This was not consistent with Student's September 26,  
21 2005 IEP, which reflected that Student's placement was to be in a GE classroom, not a SDC  
22 classroom.

23          5.       Dr. Don Klose, District school psychologist and administrator, discovered this error  
24 during the first two weeks of the 2006-2007 school year. Dr. Klose determined it would constitute  
25 a change of placement if Student was allowed to stay in the SDC classroom. As a result, Dr. Klose  
26 directed school staff to move Student into a GE classroom where he was provided with resource  
27 specialist support by Susan Ryan ("Ryan").

28          6.       Student's IEP of September 25, 2005 did not specify speech and language therapy

1 as a "designated instructional service" or "DIS" because Student received these services in the  
2 Learning Center. When KMS, school staff reviewed Student's IEP, because it did not show  
3 speech and language therapy as a DIS, they did not realize Student was supposed to receive speech  
4 and language therapy as well as resource specialist support services. Student, therefore, did not  
5 receive speech and language therapy from District during the fall of 2006.

6 7. Because the movement of Student to a GE classroom was not a change of  
7 placement, District was not required to hold an IEP meeting and/or obtain parental consent before  
8 correcting the initial, erroneous SDC placement.

9 8. On October 5, 2006, Hawkins brought a written request for Student's records to the  
10 KMS main office, which was promptly brought to the attention of Ryan. Hawkins told the KMS  
11 secretary she was requesting records to provide to Student's tutor, which the secretary in turn  
12 noted to Ryan. In response, Ryan provided Hawkins with Student's September 29, 2005 IEP and  
13 Student's test scores, which is what Ryan thought would be most helpful to the tutor.

14 9. On October 20, 2006, Adams Esq. also submitted a written request to District  
15 requesting Student's complete educational records. In response, District provided a copy of  
16 Student's educational records to legal counsel. District supplemented its production of Student's  
17 educational records at a mediation held on February 1, 2007.

18 10. Dr. Amy Rosenbaum, District school psychologist, conducted a triennial psycho-  
19 educational assessment of Student in or about late October or early November 2006. Dr.  
20 Rosenbaum called Hawkins to interview her as part of the assessment process, but Hawkins  
21 refused to speak with her and directed Dr. Rosenbaum to call Hawkins' legal counsel. Hawkins  
22 did not provide Dr. Rosenbaum with the name or telephone number of her legal counsel, however.  
23 Dr. Rosenbaum conferred with Dr. Klose regarding the situation, and he informed Dr. Rosenbaum  
24 that the IEP was "on hold."

25 11. On November 1, 2006, Hawkins requested a due process hearing on Student's  
26 behalf before the Office of Administrative Hearings ("OAH") alleging that District denied Student  
27 a free and appropriate education ("FAPE") as required by federal and state law. The Due Process  
28 Complaint ("Complaint") alleged District denied Student a FAPE by failing to conduct an annual

1 and triennial IEP meeting; failing to provide a program designed to meet Student's unique needs  
2 and provide him with educational benefit; failing to permit Parent to inspect and review all of  
3 Student's records; and violated Parent's procedural rights by failing to provide Parent with prior  
4 written notices. The Complaint requested extensive relief, including multiple independent  
5 assessments and three hundred (300) hours of compensatory education in all areas of purported  
6 need, including speech and language therapy.

7 12. On November 2, 2006, just one day after Adams Esq. filed the Complaint, Ryan  
8 telephoned Hawkins to schedule Student's annual IEP meeting for November 13, 2007. Hawkins  
9 told Ryan she could not attend the IEP meeting on November 13 because of a conflict with her  
10 daughter's IEP meeting. Hawkins said she would call Ryan back to reschedule, but she did not.  
11 When Ryan called Hawkins again a few days later to schedule the IEP meeting, Hawkins referred  
12 Ryan to Adams Esq. Ryan then telephoned Adams Esq., who informed Ryan that neither Hawkins  
13 nor counsel would attend an IEP meeting until after mediation occurred on the Complaint.

14 13. The District was ready to conduct Student's annual IEP team meeting no later than  
15 November 13, 2006, which was about six (6) weeks after the IEP team meeting was due. The  
16 District was unable to conduct the IEP team meeting for two reasons. First, Hawkins refused to  
17 attend the IEP meeting on the advice of her legal counsel, Adams Esq. Second, Adams Esq.  
18 unreasonably insisted that any IEP team meeting must be held after mediation of the Complaint  
19 filed on November 1, 2006.

20 14. A due process hearing was held on April 2-5 and 10, 2007. On May 18, 2007, ALJ  
21 John Thawley ("the ALJ") issued his written decision in which he concluded that District  
22 prevailed on Claims 2, 4 and 5, and partially prevailed on Claims 1 and 3. He further found that  
23 Student partially prevailed on Claims 1 and 3, but that District conceded at the hearing the basis of  
24 the two partial claims on which Student prevailed. The ALJ found that District was correct in  
25 moving Student from the erroneous KMS SDC placement to a KMS GE classroom. The ALJ also  
26 found that but for a failure to provide speech and language therapy between August 31, 2006 and  
27 November 13, 2006, District provided appropriate special education and related services to  
28 Student.

1 15. Regarding placement, the ALJ concluded that Student's placement in the GE KMS  
2 classroom with resource specialist support "was designed to meet Student's unique needs and was  
3 reasonably calculated to provide some educational benefit." He noted that Student received as  
4 much resource specialist support in the fall of 2006 as he had received the previous year in the  
5 Learning Center. The ALJ concluded that, but for the lack of speech and language therapy during  
6 his first six weeks at KMS, Student's KMS placement was appropriate. (*Id.*)

7 16. The ALJ also found that there were four demonstrably false claims in the  
8 Complaint. These were: (1) Student was not recommended for extended school year ("ESY") after  
9 the 2005-2006 school year; (2) Student was exited from special education; (3) District failed to  
10 present [Hawkins] with an assessment plan; and (4) [Hawkins] did not consent to the recent  
11 testing. The ALJ noted that in her testimony Hawkins conceded: (1) each of Student's three IEPs  
12 indicated that ESY was recommended; (2) Student was never exited from special education; (3)  
13 District gave her an assessment plan, which she signed. The ALJ found that "[Hawkins]  
14 unreasonably refused to attend an IEP team meeting, and [Hawkin's] attorney unreasonably  
15 insisted that any IEP team meeting must be held after mediation." As a result, the ALJ excused  
16 District for not holding an IEP team meeting after November 13, 2006.

17 17. District was required to defend against patently false claims brought against it by  
18 Hawkins and Adams Esq. The false claims were alleged as part of Claim 3 on which District  
19 prevailed, as well as part of Claim 2 and Claim 5 on which District prevailed.

20 18. The ALJ awarded Student only twenty-two (22) hours of compensatory speech and  
21 language services; no other relief was granted. The amount of relief obtained by Student was only a  
22 miniscule portion of the three hundred (300) hours of compensatory education which Student  
23 requested in his Complaint.

24 (C) Legal Issues:

25 1. Whether District denied Student a FAPE by moving him from a special day class  
26 to a general education classroom without parental knowledge or consent.

27 2. Whether District failed to provide Student with a program and services adequate  
28 to meet his unique needs when it failed to provide a program that conformed to the 9/29/05 IEP.

1 3. Whether District failed to provide Student's complete educational records to  
2 Hawkins in a timely fashion. Whether such failure, if any, infringed on her right to meaningfully  
3 participate in the decision making process, thus denying Student a FAPE.

4 4. Whether District was required to provide Student with Prior Written Notice  
5 regarding the following:

6 a. change of Student's placement, if any, from a special day classroom to a  
7 regular education classroom;

8 b. failure to hold Student's annual and triennial IEP meeting, if any on or  
9 before its 9/29/06 due date;

10 c. Failures to provide Student with speech and language services, if any.

11 Whether such failure to provide Prior Written Notice, if required and if any, resulted  
12 in the denial of a FAPE to Student.

13 (D) Motions: Plaintiff filed a motion to dismiss Defendant's Counterclaim. By order  
14 dated On March 11, 2007, Defendant's Counterclaim was dismissed with prejudice. Plaintiff and  
15 Defendant anticipate filing cross motions for summary judgment with appropriate briefing  
16 schedules, subject to the Court's direction as to the required procedure.

17 (E) Amendment of the Pleadings: The Parties do not wish to amend the pleadings at  
18 this time.

19 (F) Evidence Preservation: The Parties agree that there is no additional evidence  
20 needed with regard to Plaintiff's complaint other than the administrative record.

21 (G) Disclosures: The Parties agree that there is no need at this time for an initial  
22 exchange with respect to the Complaint since the record below, including the transcript of the  
23 proceedings, contains the documents upon which the underlying decision was based and that this  
24 Complaint is exempt from initial disclosure requirements under FRCP Rule 26(a)(1)(B)(i).

25 (H) Discovery: The Parties previously agreed that discovery was limited to Defendant's  
26 Counterclaim. As the Counterclaim has now been dismissed with prejudice, the Parties do not  
27 anticipate further discovery.

28 (I) Relief.

1 Plaintiff is seeking the following relief:

- 2 1. Independent assessments in all areas of suspected disability, including but not  
3 limited to psycho-educational and assistive technology assessments.
- 4 2. The development of a behavior support plan to address Student's attention issues  
5 related to his ADHD.
- 6 3. Compensatory education and services, including but not limited to speech and  
7 language therapy and one-to-one educational therapy.
- 8 4. Attorneys' fees and costs, pursuant to 20 U.S.C. Section 1415, for the underlying  
9 hearing and appeal, incurred in connection with the filing and prosecution of this  
10 action, according to proof.
- 11 5. For any further relief that this Court deems just and proper.

12 Defendant is seeking the following relief:

- 13 1. Defendant seeks a ruling from this Court affirming the decision in the  
14 underlying administrative proceeding.
- 15 2. Defendant seeks a ruling from this Court barring or reducing Plaintiff's  
16 attorney's fees on the ground that the relief finally obtained by Student at the  
17 administrative hearing was not more favorable than the District's offer of  
18 settlement. (20 U.S.C. § 1415(i)(3)(D)(i)(I) and (II)).
- 19 3. A reduction in an award of attorney's fees to Plaintiff based on his limited  
20 degree of success.

21 (J) Settlement and ADR: Parties met and conferred for ADR purposes on October 31,  
22 2007. Plaintiff has requested that the parties engage in a settlement conference before a Magistrate  
23 Judge. The parties were scheduled to proceed to a mandatory settlement conference on Tuesday,  
24 March 18, 2008 before Magistrate Judge Larson; however, the settlement conference was  
25 continued due to an illness with Judge Larson. Petitioner requests that the Berkeley Unified  
26 School District Superintendent or Board of Education President be present at the settlement  
27 conference.

28 (K) Magistrate Judge: Plaintiff and Defendant both consent to the Magistrate Judge

1 Edward M. Chen.

2 (L) Narrowing of Issues: The Parties have not agreed to a narrowing of issues.

3 (M) Expedited Schedule: The Parties agree that this case may be handled on an  
4 expedited basis with a streamlined process.

5 (N) Scheduling: In the event that the settlement conference is unsuccessful, Plaintiff  
6 requests a briefing schedule on the cross motions for summary judgment to commence in the third  
7 quarter of 2008.

8 (O) Trial: The Parties agree that this case will be tried by the court.

9 (P) Pursuant to Civil Local rule 3-16, the Parties have each filed the "Certification of  
10 Interested Entities or Persons."


11  
12 Dated: March 18, 2008

Respectfully submitted,

ADAMS ESQ

JEAN MURRELL ADAMS  
Attorneys for Plaintiff,  
Kelsha Hawkins

ATKINSON, ANDELSON, LOYA, RUDD &  
ROMO

By:   
PETER STURGES  
Attorney for Berkeley Unified School District